

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED

FEB 01 2018

Clerk, U.S. Courts
District Of Montana
Missoula Division

MICHAEL S. ALLARD,

CV 16-63-M-DLC-JCL

Petitioner,

ORDER

vs.

STATE OF MONTANA,

Respondent.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this case on December 12, 2017, recommending that Petitioner Michael S. Allard's ("Allard") Amended Petition for Writ of Habeas Corpus be dismissed with prejudice, and the State of Montana's Motion to Dismiss be granted. (Doc. 41 at 21.) Allard did not object to the Findings and Recommendations, and so has waived his right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v.*

Syrax, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Judge Lynch determined that an unlawful state action did not exist to delay the accrual of the one-year statute of limitations period pursuant to 28 U.S.C. § 2244(d)(1)(B) because Allard's failure to receive his Amended Judgment was not attributable to the State. (Doc. 41 at 9.) Judge Lynch found that Allard was not entitled to equitable tolling because Allard's delay in receiving his Amended Judgment was not the cause of his failure to timely file his habeas petition. (*Id.* at 15.) Instead, Allard failed to act diligently in seeking information relative to his Amended Judgment. (*Id.*) Additionally, Judge Lynch found Allard was not suffering under a severe mental impairment that caused his untimely filing. (*Id.* at 18.) Accordingly, Judge Lynch determined that Allard's Amended Petition should be dismissed as time-barred because Allard did not demonstrate that extraordinary circumstances rendered him unable to prepare his habeas petition. (*Id.* at 19.)

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that Allard's Amended Petition should be dismissed as time-barred.

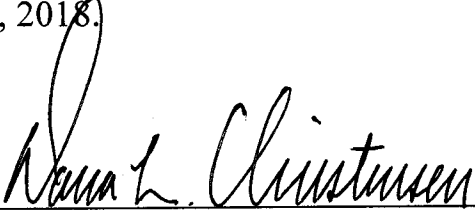
Accordingly, IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 41) are ADOPTED IN FULL. Allard's Amended Petition (Doc. 18) is DISMISSED WITH PREJUDICE as untimely.

IT IS FURTHER ORDERED that the State of Montana's Motion to Dismiss (Doc. 29) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court shall close this matter and enter judgment in favor of Respondent pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 1st day of February, 2018.



Dana L. Christensen, Chief Judge
United States District Court